IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Krishna Chandra Singhal Vs. R.S.R.T.C. & Ors.

S.B. CIVIL WRIT PETITION NO. 2896/1994
under Article 226 of the Constitution of India.

Date of Order :: 02nd May, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr. Advocate assisted by
Mr. P.S. Chundawat, for the petitioner.
Mr. Sangeet Lodha, for the respondents.

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BY THE COURT :

This petition for writ is preferred to assail validity, propriety and correctness of the order dated 28.2.1994 passed by the Chief Manager, Rajasthan State Road Transport Corporation, Jodhpur imposing a penalty of stoppage of one annual grade increment with cumulative effect upon the petitioner as a consequent to disciplinary proceedings initiated against him under charge-sheet dated 17.1.1990. By the charge-sheet aforesaid on basis of a complaint made by Sh. Yadav Singh, RSRTC Workshop Incharge, Sirohi, the petitioner was charged for the misconduct prescribed under Clause 34 of the Rajasthan State Road Transport Corporation Standing Orders. Under an order dated 31.1.1990

the Dy. Chief Manager, RSRTC, Jodhpur appointed Sh. C.L. Sharma, Divisional Mechanical Engineer as inquiry officer, who after completing inquiry submitted a report to the disciplinary authority, a copy whereof was also supplied to the petitioner by the Chief Manager, RSRTC, Jodhpur under a communication dated -Nil- No.जो/93/निस. By the communication aforesaid the petitioner was also instructed to appear before the disciplinary authority for personal hearing but according to the petitioner no such opportunity of hearing was given to him and the disciplinary authority by the order impugned imposed a major penalty upon him. While giving challenge to the order aforesaid the contention of the learned counsel for the petitioner is for violation of principles of natural justice on following counts:-

1. the inquiry officer was the person who prepared the inspection report and, therefore, he was biased just to maintain his report of inspection;

2. the entire inquiry deserves to be vitiated, as despite demand the documents required by the petitioner in his defence were not supplied;

3. no explanation or comments were sought by the petitioner with regard to findings given by the inquiry officer; and

4. no opportunity of personal hearing was given by the disciplinary authority to the petitioner.

To substantiate the first contention it is contended by learned counsel for the petitioner that Sh. C.L. Sharma prepared the inspection report and therefore he was biased against the petitioner as he wanted to maintain and uphold his earlier decision, however, in entire petition for writ there is no factual foundation to substantiate the allegation of bias. In para 19/1 while referring grounds to claim relief the allegation of bias is made by the petitioner but nothing is said in entire petition as to what were the circumstances to believe a real likelihood of bias. A real likelihood of bias cannot be established merely on assumptions but it is required to be proved on basis of available facts. This Court in the case of Educational Society of Sophia High School, Mt. Abut & Ors. Vs. The Rajasthan Non-Government Educational Institutions Tribunal, Jaipur & Ors. (SBCivil Writ Petition No.1442/2004, decided on 25.4.2007), while dealing with the same question held as under:-

> "Essential and integral part of the principles of natural justice is that the decision should be made free from bias and should always be impartial. The concept of natural justice is a living and dynamic concept. Its application is always dependent to the facts and not to the pre-suppositions or assumptions. The bias is envisaged and a real likelihood where the decision maker is desirous of the specific result of the inquiry but it cannot be determined on basis of surmises or conjectures or by pre-supposition. The bias or prejudice cannot be accepted without getting satisfied about their real likelihood and

> the test to adjudge it is that what a reasonable man would believe and perceive in given facts about real likelihood of bias.
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> Hon'ble Supreme Court in the case of A.K.Kraipak (supra) held that "it is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

In the instant matter, no material is available on record on basis of that bias against the petitioner can be established. A vague assertion is made by the petitioner in the terms, "it is submitted that Enquiry Officer in the present case is the one who has prepared the inspection report. This being the position petitioner had a reasonable apprehension that a person who had earlier prepared a report which was the basis of what was the matter in issue in the enquiry could not make an inquiry in an objective manner as he was biased against petitioner as such a person will always be out to uphold his earlier decision." The entire allegation is based on only assumptions and there is nothing to establish real likelihood of bias, therefore, the same is absolutely ill-founded.

I also do not find any force in second contention of the petitioner to the effect that entire disciplinary proceedings deserve to be quashed as no adequate opportunity was given to the petitioner to defend himself by not supplying the documents desired. In entire petition for writ it is nowhere stated that what were the documents required by the delinquent employee and how those documents were relevant for his defence. It is pertinent to note that in para 5 of the writ petition it is stated that by an application dated 23.1.1990 the petitioner sought copies of documents referred therein but neither a copy of the communication dated 23.1.1990 is placed on record nor in entire petition for writ reference of the documents demanded by the petitioner is given. In such circumstances it is extremely difficult to accept the contention of the petitioner that there was violation of principles of natural justice due to non-supply of relevant documents. It is well settled that in the matter pertaining to disciplinary proceedings a delinquent employee must establish the prejudice caused to him because of any commission or omission on the part of the inquiry officer or the disciplinary authority. In the instant matter, as a matter of fact, the allegation of the petitioner with regard to non-supply of documents is absolutely vague as no reference of the documents concerned is given.

Beside the above it is relevant to note that the respondent in reply to notice to show cause have denied the fact about non supply of the documents. It is specifically stated that the documents germane to the charge were made available to the petitioner alongwith the charge-sheet, the delinquent employee was also allowed to make inspection of other available documents during the course of inquiry and he was further directed to make inspection of remaining documents at Sirohi on 8.5.1990. The inquiry officer also mentioned in the inquiry report about inspection of documents by the petitioner.

The next contention of learned counsel for the petitioner is that no opportunity was given to the petitioner to submit his explanation and comments with regard to the findings given by the inquiry officer. While dealing with the document Annexure-10 whereunder a copy of inquiry report was given to the petitioner it is contended that by the communication aforesaid an opportunity of personal hearing was given to the petitioner but not the opportunity to make comments upon the inquiry report was given and the personal hearing cannot be a substitute for a show cause notice regarding the proposed punishment as contemplated by Hon'ble Supreme Court in the case of Union of India Vs. Mohd Ramzan (AIR 1991 SC 471).

The contention aforesaid is also having no merit as the purpose of supplying a copy of inquiry report in view of the judgment of Hon'ble Supreme Court in the case of Union of India Vs. Mohd Ramzan (supra) is to make a delinquent employee acquaint with the adverse material that may be used by the disciplinary authority against him while considering the issue with regard to imposition of penalty. A copy of inquiry report was admittedly given to the petitioner and he was also instructed to appear before the disciplinary authority for personal hearing, as such, ample opportunity was available to the petitioner to make representation if he was having any grievance or explanation for the findings given by the inquiry officer.

Much emphasis is given by learned counsel for the petitioner while advancing the last contention that as a matter of fact opportunity of personal hearing was also not given to the petitioner as instead of giving personal hearing by the disciplinary authority certain statements were recorded by his personal assistant.

I am of the considered opinion that even by accepting whatever stated by the petitioner in this regard it cannot be inferred that there was any violation of principles of natural justice. After having a copy of inquiry report the petitioner could have submitted a detailed representation explaining all circumstances and meeting with all the

findings given by inquiry officer. The petitioner no where tried to meet with the findings given by the inquiry officer. The petitioner as a matter of fact utterly failed to prove any prejudice caused to him even by non-grant of personal hearing as stated.

In view of it, I do not find any reason to interfere with the order impugned under extra ordinary jurisdiction of this Court. Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

Jgoyal/-